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No. 99-1434

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

THE MEAD CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether classification rulings issued by the Customs Service are entitled to deference in determining the proper tariff classification of imported goods.

2. Whether the Customs Service reasonably interpreted the statutory phrase "diaries, notebooks and address books, bound" in Subheading 4820.10.20 of the Harmonized Tariff Schedule of the United States to include the spiral-bound and ring-bound day planners imported by respondent.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 185 F.3d 1304. The opinion of the Court of International Trade (Pet. App. 19a-27a) is reported at 17 F. Supp. 2d 1004. The Customs Service ruling (Pet. App. 28a-47a) that applies to this case is cited as HQ No. 955937 and is reported unofficially at 1994 WL 712863 (Customs).

JURISDICTION

The judgment of the court of appeals was entered on July 28, 1999. A petition for rehearing was denied on November 1, 1999 (Pet. App. 17a). On January 19, 2000, the Chief Justice extended the time for filing a petition for a writ of certiorari to March 1, 2000. The petition

for a writ of certiorari was filed on February 29, 2000, and was granted on May 30, 2000. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. General Note 20 of the Harmonized Tariff Schedules of the United States, 19 U.S.C. 1202 (Supp. I 1995), provides in relevant part:

> The Secretary of the Treasury is hereby authorized to issue rules and regulations governing the admission of articles under the provisions of the tariff schedules. * * *

2. 19 U.S.C. 1502(a) provides in relevant part:

> The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry. * * *

3. 19 U.S.C. 66 provides in relevant part:

> The Secretary of the Treasury shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations not inconsistent with law, to be used in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports * * * and shall give such directions to customs officers and prescribe such rules and forms

> to be observed by them as may be necessary for the proper execution of the law.

4. 19 U.S.C. 1624 provides:

> In addition to the specific powers conferred by this chapter the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

5. 19 U.S.C. 1625 provides in relevant part:

> (a) Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.
>
> * * * * *
>
> (c) A proposed interpretive ruling or decision which would—
>
> > (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
> >
> > (2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;
>
> shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day

period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

6. For the period that this case involves, Subheading 4820.10.20 of the Harmonized Tariff Schedules of the United States, 19 U.S.C. 1202 (Supp. I 1995), provides a rate of duty of 3.2% for:

Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles * * *.

7. 19 C.F.R. 177.9(a) provides in relevant part:

Effect of ruling letters generally. A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. * * *

8. 19 C.F.R. 177.10 provides in relevant part:

(a) *Generally.* Within 120 days after issuing any precedential decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. For purposes of this paragraph a precedential decision includes any ruling letter, internal advice memorandum, or protest review decision. * * *

* * * * *

(c) *Changes of practice or position.*

(1) Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the Federal Register and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the contemplated change of practice will result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry.

STATEMENT

This case concerns whether judicial deference is owed to the tariff classification rulings issued by the Customs Service under 19 U.S.C. 1502(a). That statute

authorizes the Secretary of the Treasury to adopt "rules and regulations" providing for the issuance of such "binding rulings prior to the entry of the merchandise" as may "be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon * * * ." 19 U.S.C. 1502(a). Pursuant to that authority, the Secretary has provided for the issuance of tariff classification rulings by the Customs Service which are "binding on all Customs Service personnel" and which, "[i]n the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter * * * may be cited as authority in the disposition of transactions involving the same circumstances." 19 C.F.R. 177.9(a). In addition, the Customs Service is authorized to issue classification rulings in connection with specific merchandise already imported, 19 C.F.R. 177.11(a), and to rule on protests from customs classification determinations, 19 U.S.C. 1515(a). The classification determinations set forth in such rulings and protest review decisions are also "precedential" in effect. 19 C.F.R. 177.10(a).[1]

[1] All "binding rulings" and other "precedential" actions of the Customs Service are published in the Customs Bulletin or otherwise made available for public inspection "[w]ithin 120 days after" they are issued. 19 C.F.R. 177.10(a). If a proposed ruling would have the "effect of changing a practice and * * * result[] in the assessment of a higher rate of duty," notice of the proposed change of practice is to "be published in the Federal Register and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change." 19 C.F.R. 177.10(c). See also 19 U.S.C. 1625(c). Such notice and opportunity for comment is also afforded when the contemplated change would "result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry." 19 C.F.R. 177.10(c).

In the present case, the Federal Circuit held that these tariff classification rulings of the Customs Service are to be given no judicial deference, and are instead to be disregarded utterly in interpreting the customs provisions. Pet. App. 6a-7a. Having elected to disregard the agency's interpretive "binding rulings," the court then concluded that the particular items imported by respondent were subject to no duty under the provisions of the Tariff Act involved in this case. That holding is incorrect and the judgment of the court of appeals should be reversed.

1. Respondent imports "daily planners," which are "loose-leaf books containing calendars, room for daily notes, telephone numbers, addresses and notepads. This sort of product originated in England and is probably best known under the trademark of Filofax." Pet. App. 19a. Under Subheading 4820.10.20 of the Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. 1202 (Supp. I 1995), if such items are properly classified as "bound" "diaries," they are subject to an import duty of 3.2% of their value.[2] If, however, these items are not "bound" or are not "diaries," they would then fall under Subheading 4820.10.40 of the HTSUS as "[o]ther" items for which no duty applies. Pet. App. 20a-21a, 24a.

In 1993, when respondent imported its daily planners into the United States, they were classified as "bound" "diaries" to which the 3.2% duty then applied. Respon-

[2] The rate of duty on these items has been reduced since this case arose. For importations occurring after 1998, the rate was reduced to 1.6% of value. HTSUS Subheading 4820.10.20, 19 U.S.C. 1202 (Supp. IV 1998).

dent filed an administrative protest of that classification. On October 21, 1994, the Customs Service issued a detailed denial of that protest in Headquarters Ruling Letter (HQ) No. 955937, 1994 WL 712863 (Customs). Pet. App. 28a-47a. That ruling noted that the issue presented by respondent "has been addressed in several rulings by this office" (*id.* at 31a-32a, citing, *e.g.*, Headquarters Ruling Letters (HRL) Nos. 955636, 1994 WL 220733 (Customs Apr. 6, 1994) and 955637, 1994 WL 220734 (Customs Apr. 6, 1994)):

> In these rulings this office has consistently determined that articles similar in design and/or function to the instant merchandise are classifiable as diaries. The rationale for this determination was based on lexicographic sources, as well as extrinsic evidence of how these types of articles are treated in the trade and commerce of the United States.

The agency noted that the text of Subheading 4820.10, "the common dictionary definition of 'diary', and past Customs rulings" all reflect that such daily planners are properly "classifiable as a bound diary." Pet. App. 32a. See note 1, *supra*.

The Customs Service explained that the daily planners imported by respondent "fit squarely" within one of the definitions of the word "diary" contained in the *Oxford English Dictionary*—as "[a] book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings." Pet. App. 32a-33a. The Service rejected respondent's assertion that the agency should base its classification of such merchandise solely on the first enumerated definition of "diary" in one dictionary as "[a] daily record of events or transactions, a journal." *Id.* at 33a. The agency explained that "[m]any words have several definitions

and Customs may consider any or all of them when making a classification determination." *Ibid.* The agency concluded that the broader definition of the term "diary" adopted in its rulings "reflects the common and commercial identity of these items in the marketplace"—a fact evidenced by the common usage of the term "desk diary" to describe the imported merchandise. *Id.* at 34a.

Noting that customs provisions commonly incorporate prevailing commercial usages, the agency concluded that "there are many forms of 'diaries'" and that "the determinative criteria as to whether these types of articles are deemed 'diaries' for classification purposes is whether they are primarily designed for use as, or primarily function as, articles for the receipt of daily notations, events and appointments." Pet. App. 39a-40a. Since the daily planners imported by respondent are designed for those exact functions, the agency concluded that they constitute "diaries" within the meaning of HTSUS 4820.10.20. *Id.* at 34a, 43a.

The Customs Service further concluded that the daily planners imported by respondent are "bound" within the meaning of the statutory classification provision. Pet. App. 44a-47a. The agency emphasized that, in determining what constitutes a "bound" "diary," the traditional elements of formal "bookbinding" are not applicable. "The issue is not what constitutes a bound book, and there is no requirement that a diary be in the format of a book." *Id.* at 44a. Instead, the agency noted that the official explanation of the term "bound" in the notes of the Harmonized System Committee—the international authority that had drafted the terminology employed in this customs provision—states that the term "bound" includes "reinforcements or fittings of metal, plastics, etc." *Id.* at 45a. The Customs Service

noted that the explanation of the Harmonized System Committee "represent[s] the official interpretation of the [Harmonized Tariff System] at the international level" and that the Committee's explanation of "this language [is] indicative of the drafters' intent to include as bound any articles possessing ring binders or spiral binders." *Ibid.* The agency thus concluded that, "whether a ring binder or spiral" binder is used, "[p]ages held together in this manner" are "bound" for the purposes of this customs provision. *Id.* at 46a.

Since respondent's daily planners are bound in this very manner, the Customs Service ruled that these articles are "bound" "diaries" to which the 3.2% duty applied under HTSUS 4820.10.20. Pet. App. 46a-47a.

2. Six months after this ruling was issued, respondent again imported additional articles of the same type. When the agency again ruled that these daily planners are subject to duty as "bound" "diaries," respondent then raised exactly the same protest that the agency had just reviewed and rejected in HQ No. 955937. When that protest was again denied by the agency, respondent brought this action in the United States Court of International Trade to seek review of the agency's classification determination. Pet. App. 19a.

3. The Court of International Trade has exclusive jurisdiction to review the denial of a protest from a Customs Service classification decision. 28 U.S.C. 1581(a). On cross-motions for summary judgment, the court upheld the agency's determination in this case.

The court noted that respondent's daily planners were "designed for notations concerning the full range of daily experience" and that any "supplementary material" they contain does not alter their primary character as business diaries. Pet. App. 25a. The court

explained that its prior decisions in *Fred Baumgarten* v. *United States*, 49 Cust. Ct. 275 (1962), and *Brooks Bros.* v. *United States*, 68 Cust. Ct. 91 (1972), indicate that when, as here, "the diary portion was the essential or indispensable part of the importation," that is "controlling of its classification." Pet. App. 22a. The court noted that the current "tariff language" in the HSTUS was "adopted with knowledge of these judicial precedents." *Id.* at 23a (citing *Central Prods. Co.* v. *United States*, 936 F. Supp. 1002, 1006-1007 (Ct. Int'l Trade 1996)).[3]

The court also upheld the conclusion of the Customs Service that respondent's diaries were "bound" for purposes of HTSUS 4820.10.20. The court explained that "[t]he common meaning of 'bound' is fastened. The irrevocability of the fastening is not important so long as it goes beyond the transitory role of packaging." Pet. App. 26a.

4. The Federal Circuit has exclusive jurisdiction to review decisions of the Court of International Trade. 28 U.S.C. 1295(a)(5). On appeal from the decision in this case, the Federal Circuit reversed. Pet. App. 1a-16a.

a. The court of appeals first addressed whether it would afford deference to the classification rulings of

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[3] The Court of International Trade did not cite or rely upon the Headquarters Rulings (HQ No. 955937 and HRL Nos. 955636 & 955637) that the Customs Service issued to respondent in resolving this same issue in 1994. See page 8, *supra*. The court did, however, find support for its interpretation in a different Customs Service ruling, HQ No. 955199, 1994 WL 85353 (Customs Jan. 24, 1994), in which the agency explained the distinction between items that are "similar" to diaries (for which a duty applies) and "other" items (for which no duty is applicable). Pet. App. 24a ("The rationale used in that ruling is persuasive * * * .").

the Customs Service in determining the proper "meaning and scope of the tariff terms." Pet. App. 4a. The court noted that, in *United States* v. *Haggar Apparel Co.*, 526 U.S. 380, 391 (1999), this Court held that (Pet. App. 5a):

> if an HTSUS provision is ambiguous and Customs promulgates a regulation that "fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design," courts should give that judgment "controlling weight" as articulated in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 [1984].

The Federal Circuit reasoned, however, "that *Haggar*, and thus *Chevron* deference, does not extend to ordinary classification rulings [of the Customs Service]." *Ibid.* The court stated that deference is inappropriate for tariff classification rulings because those rulings are issued without the benefit of public comment, "do not carry the force of law and are not, like regulations, intended to clarify the rights and obligations of importers beyond the specific case under review."[4] *Id.* at 6a. The court stated that the "significant differences between Customs regulations and Customs rulings convince this court that *Haggar's* reach does not extend to standard Customs rulings." *Id.* at 6a-7a.[5] The court

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[4] In so stating, the court of appeals failed to consider or address the express language of the regulations which makes such rulings "binding on all Customs Service personnel" and which specifies that "the principle" of the rulings "may be cited as authority in the disposition of transactions involving the same circumstances." 19 C.F.R. 177.9(a). See also 19 C.F.R. 177.10(a) (protest review decisions are "precedential").

[5] The court compared Customs Service classification rulings to IRS interpretive rulings, which the court stated have no "binding effect" on the courts. Pet. App. 7a. Although an interpretive ruling is not "binding" in the sense that it is a part of the positive law that applies in courts, it is well established that courts are to defer to Treasury rulings that represent a "reasonable" elaboration of the statute. See *United States* v. *Correll*, 389 U.S. 299, 306-307 (1967); pages 24-27, *infra*.

of appeals concluded that it would therefore "continue[] to adhere to its [pre-*Haggar*] precedent giving no deference to such rulings." *Id.* at 7a (citing *Rollerblade, Inc.* v. *United States*, 112 F.3d 481, 484 (Fed. Cir. 1997)).[6]

b. Having thus chosen simply to disregard the interpretive classification rulings of the Customs Service, the Federal Circuit found it unnecessary to address or consider the detailed reasoning adopted by the Customs Service in issuing the Headquarters Rulings that apply to the facts of this case. See pages 7-10, *supra*. The court instead looked primarily to what it regarded as an appropriate dictionary definition of the term "diary" in the *Oxford English Dictionary* and concluded that, to be a "diary," an item of merchandise must have "relatively extensive" space for the recording not only "of the events themselves, but also a person's observations, thoughts, or feelings about them." Pet. App. 12a. Giving no weight to the common commercial use of the term "diary," the court expressed the view that a daily planner that contains "a place to jot down the date and time" of future appointments

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[6] Under Customs Service regulations, a new interpretation that would increase the duty from that applicable under a prior interpretation may not be adopted without prior Federal Register notice and opportunity for public comment. 19 C.F.R. 177.10(c); see note 1, *supra*. The court of appeals reserved the question whether such revocation decisions would be entitled to deference under *Chevron*. Pet. App. 6a n.1.

cannot qualify as a "diary" because the very essence of a "diary" is to be "retrospective, not prospective." *Id.* at 12a-13a.

Applying "the above principles," the court concluded that respondent's daily planners are not "diaries" within the meaning of HTSUS Subheading 4820.10.20 because (i) "the space provided" in those planners "would not permit a diarist to record relatively extensive notations about events, observations, feelings, or thoughts" and, (ii) while "[t]hese pages facilitate advance planning and scheduling[,] * * * a diary is not for planning." Pet. App. 13a-14a.

c. The court of appeals further concluded that respondent's daily planners are not "bound" within the meaning of the HTSUS 4208.10.20. To determine the meaning of this customs provision, the court looked to a book publishing industry definition of a "bound book" as a book that is "sewn, glued, or stapled into permanent bindings." Pet. App. 15a. The court stated that a diary may be considered as "bound" under this book publishing definition only if a "permanent" binding has been employed. *Ibid.* Because respondent's product is "contained in ringed loose-leaf binders" that lack the "permanent" character of a "bound book," the court held that these items are not "bound" within the meaning of the tariff provision. *Id.* at 15a-16a.

In reaching that conclusion, the court of appeals did not address the reasoning of the applicable Headquarters Rulings or of the authorities cited therein. In particular, the court of appeals did not acknowledge or discuss the official interpretive statements of the Harmonized System Committee (which drafted these tariff provisions) which explain that the term "bound" "diaries" as used in HTSUS 4820.10.20 includes diaries

that are bound with metal or plastic fittings, such as rings or spirals. See Pet. App. 45a; page 10, *supra*.

d. The court of appeals held that, since respondent's daily planners are similar to, but are not, "bound" "diaries" within the meaning of this tariff provision, they are to be "classified under the 'other' subheading of [HTSUS] 4820.10.40," for which no duty applies. Pet. App. 16a. The United States filed a timely petition for rehearing with suggestion for rehearing en banc. A response to the petition was requested by the court from respondent. The court thereafter denied the petition without a published vote. *Id.* at 17a.

SUMMARY OF ARGUMENT

I. The court of appeals erred in refusing to afford any deference to the formal "binding ruling" of the Customs Service adopted to apply and enforce the customs laws pursuant to 19 U.S.C. 1502(a). Decisions of this Court affording broad deference to the views of the federal officials who administer tariff legislation date to the very beginning of the Republic. *United States* v. *Vowell*, 9 U.S. (5 Cranch) 368, 372 (1809). This Court has long held that the agency's formal interpretations of the customs provisions—whether announced in an interpretive ruling or in a regulation—are to be sustained if they reflect a "reasonable" elaboration of the statutory scheme. *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 450 (1978) (interpretive rulings); *United States* v. *Haggar Apparel Co.*, 526 U.S. 380, 391 (1999) (interpretive regulations).

The conclusion of the court of appeals that deference is due only to "regulations" and not to "rulings" of the Customs Service (Pet. App. 6a-7a) is thus plainly in error. When, as here, Congress has expressly authorized an agency to adopt "such rules and regulations

* * * as may be necessary" for the implementation and enforcement of a statutory scheme (19 U.S.C. 1502(a)), this Court has made clear that the agency's interpretive rulings are "dispositive" "[u]nless demonstrably irrational." *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 565 (1980). Indeed, this Court has long held that the similar interpretive rulings of the Treasury that implement and enforce the revenue laws must be sustained when "reasonable" because "Congress has delegated to the Commissioner, not to the courts, the task of prescribing 'all needful rules and regulations for the enforcement' of the Internal Revenue Code." *United States* v. *Correll*, 389 U.S. 299, 306-307 (1967) (quoting 26 U.S.C. 7805(a)).

This is not a case like *Christensen* v. *Harris County*, 120 S. Ct. 1655 (2000), in which the Court recently concluded that a lesser standard of deference applies to an agency opinion issued in an informal format that "Congress has not authorized for that purpose." 1 Kenneth C. Davis & Richard J. Pierce, *Administrative Law Treatise* § 3.5, at 120 (3d ed. 1994), cited with approval at 120 S. Ct. at 1663. In the present case, the format selected by the agency—the formal adoption and issuance of binding interpretive rulings—is precisely the format authorized by Congress for this purpose. Affording deference to the agency's formal interpretations which are adopted in the precise manner that Congress has directed is necessary to "honor that congressional choice." *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. at 568.

The holding of the court of appeals that "no deference" would be accorded to the agency's "binding rulings," and the court's refusal to consider or address the reasoning set forth in those rulings, also cannot be reconciled with the holding in *Christensen* that even

informally stated agency opinions would be entitled to "some deference" and "respect" and should, at a bare minimum, be reviewed to determine if they have the "power to persuade." 120 S. Ct. at 1663 (quoting *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944)). Even under the *Skidmore* standard, the court of appeals erred in flatly stating that the agency's "binding ruling" was entitled to "no deference" in this case.

II. Under the proper standard of deference that applies to agency interpretations of the "statutes that they are charged with administering" (*Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 739 (1996)), the Customs Service classification ruling should have been sustained in this case. The tariff classification issue in this case requires interpretation of two terms in Subheading 4820.10.10 of the HTSUS—"diaries" and "bound." In numerous rulings, the agency has "consistently determined that articles similar in design and/or function to the instant merchandise are classifiable as diaries." Pet. App. 31a. In rejecting the narrowly selected definitions offered by respondent, the Service has explained that business "diaries" are a recognized commercial product and that the "broader concept of diary" applied in the agency's rulings not only "reflects the common and commercial identity of these items in the marketplace" but is also supported by dictionary sources. *Id.* at 34a.

The Customs Service has also properly concluded that these daily planners are "bound" for purposes of HTSUS 4820.10.20. The Service relied on the Harmonized Commodity Description and Coding System Explanatory Notes—"which represent the official interpretation of the HTS at the international level"—which state that such goods may be regarded as "bound" if they "have reinforcements or fittings of

metal, plastics, etc." Pet. App. 45a. This official explanation makes it "clear that the Harmonized System Committee contemplated metal binders as being within this headings's definition of bound articles." *Ibid.* Because the day planners imported by respondent are bound in precisely this manner, the agency properly concluded that these products represent "bound" "diaries" to which the tariff of HTSUS 4820.10.20 applies.

The agency's well-formulated analysis of this classification provision constitutes a "reasonable" interpretation of the statute. The court of appeals erred by simply displacing the agency's reasonable interpretation with another, perhaps plausible, interpretation of its own. The question in cases of this type is not whether the agency's interpretation is the *only* reasonable choice. When, as here, the agency's interpretation "defines a term in a way that is reasonable in light of the legislature's revealed design," the agency's judgment is to be given "controlling weight." *Nationsbank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251, 257 (1995).

ARGUMENT

I. THE CLASSIFICATION RULINGS ISSUED BY THE CUSTOMS SERVICE ARE ENTITLED TO DEFERENCE FROM THE COURTS IN DETERMINING THE PROPER TARIFF CLASSIFICATION OF IMPORTED GOODS

1. It has long been a bedrock legal principle that courts are to accord deference to the formal interpretations of a statute adopted by the agency that has been "charged with responsibility for administering the provision" by Congress. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 865 (1984). See, *e.g.*, *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 739 (1996) ("It is our practice to defer to the reasonable judgments of agencies with regard to the meaning of ambiguous terms in statutes that they are charged with administering."); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965); *McLaren* v. *Fleischer*, 256 U.S. 477, 481 (1921); *Brown* v. *United States*, 113 U.S. 568, 570-571 (1885); *Edwards's Lessee* v. *Darby*, 25 U.S. (12 Wheat.) 206, 209-210 (1827). The deference that this Court has consistently accorded to formal agency interpretations of the statutes they administer in decisions such as *Chevron* is fully applicable here.

Congress has authorized the agency to adopt such "binding rulings prior to the entry of the merchandise" as may "be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon." 19 U.S.C. 1502(a). Congress has further specified that, under the "rules and regulations prescribed by the Secretary," the Customs Service is to determine "the

final appraisement of merchandise" and "fix the final classification and rate of duty applicable to such merchandise," 19 U.S.C. 1500(a),(b), and is then to issue decisions on any protests from such classification determinations, 19 U.S.C. 1515(a). "In addition to the specific powers" conferred on the agency under these provisions, Congress further broadly empowered the agency "to make such rules and regulations as may be necessary to carry out the provisions" of the Tariff Act. 19 U.S.C. 1624. See also 19 U.S.C. 66. In view of these broad delegations of authority, Congress emphasized in enacting the Harmonized Tariff Schedule of the United States in 1988 that "[t]he Customs Service will be responsible for interpreting and applying" this statute. H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988).

The reasoning of *Chevron* thus applies directly here. Courts are to defer to the agency's reasonable interpretation of the statute it administers because of the "presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. at 740-741.

2. Decisions of this Court affording such broad deference to the views of the federal officials who administer tariff legislation date to the very beginning of the customs laws and are thus as old as the Republic itself. *United States* v. *Vowell*, 9 U.S. (5 Cranch) 368, 372 (1809), cited in *United States* v. *Haggar Apparel Co.*, 526 U.S. 380, 392 (1999). The Court has long made clear that the agency's formal interpretations of the customs provisions—whether announced in an

interpretive ruling or in a regulation—are to be sustained if they reflect a "reasonable" elaboration of the statutory scheme. *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 450 (1978) (giving deference to interpretive rulings contained in Treasury Decisions); *United States* v. *Haggar Apparel Co.*, 526 U.S. at 391 (giving deference to interpretive regulations).[7] Affording such deference to agency interpretations of the detailed customs laws is required to ensure that this complex statutory scheme "is applied in a consistent and proper manner." *Id.* at 392. See also note 11, *infra*.

Until quite recently, the Federal Circuit had consistently applied this Court's longstanding precedent to give deference to the interpretive rulings and regulations formally adopted by the Customs Service under the Tariff Act. See, *e.g.*, *Guess? Inc.* v. *United States*, 944 F.2d 855, 858 (Fed. Cir. 1991); *Generra Sportswear Co.* v. *United States*, 905 F.2d 377, 379 (Fed. Cir. 1990); *Mitsui Foods, Inc.* v. *United States*, 867 F.2d 1401, 1403 & n.3 (Fed. Cir. 1989). The Court of International Trade had similarly acknowledged that it must "defer to the agency's interpretation of the statute" if it is "sufficiently reasonable," regardless whether "the court might have reached a different result on its own" (Chief Judge Edward D. Re., *Litigation Before the United States Court of International Trade*, 19 U.S.C.A. §§ 1-1300, at XLI (West Supp. 1998)). See *DAL-Tile Corp.*

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[7] Under this standard, the court "need not find that [the agency's] construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." *Udall* v. *Tallman*, 380 U.S. at 16 (quoting *Unemployment Comm'n* v. *Aragon*, 329 U.S. 143, 153 (1946)). See also *McLaren* v. *Fleischer*, 256 U.S. at 480- 481 ("If not the only reasonable construction of the act, it is at least an admissible one.").

v. *United States*, 829 F. Supp. 394 (Ct. Int'l Trade 1993), aff'd, 26 F.3d 139 (Fed. Cir. 1994); note 7, *supra*.

3. The Federal Circuit has recently refused, however, to apply these principles of judicial deference to cases involving the collection of customs duties. In a line of decisions that began in dicta in *Crystal Clear Industries* v. *United States*, 44 F.3d 1001, 1003* (Fed. Cir. 1995), and culminated in *Rollerblade, Inc.* v. *United States*, 112 F.3d 481, 484 (Fed. Cir. 1997), the Federal Circuit held that it would give no deference whatever to the agency's interpretations of the customs laws.[8] In *United States* v. *Haggar Apparel Co.*, 526 U.S. at 391-392, however, this Court unanimously rejected those recent decisions and held that, when "the agency's statutory interpretation 'fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design, we give [that] judgment "controlling weight."'" *Id.* at 392 (quoting *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251, 257 (1995) (quoting *Chevron*, 467 U.S. at 844)).

In the present case, however, instead of following the directives of *Chevron*, *Zenith* and *Haggar*, the court of appeals stated that it would "continue[] to adhere to its precedent giving no deference to such rulings." Pet. App. 7a (citing *Rollerblade, Inc.* v. *United States*, 112

[8] Paradoxically, the Federal Circuit continued to accord *Chevron* deference to Treasury interpretations of the Tariff Act in customs valuation cases. *Goodman Mfg., L.P.* v. *United States*, 69 F.3d 505, 508 (1995). In *IKO Industries* v. *United States*, 105 F.3d 624, 626 (1997), the court distinguished those cases on the ground that they "did not involve a classification dispute but rather a dispute regarding the proper valuation." This describes rather than explains the court's inconsistency in establishing an artificial distinction between these two "traditional categor[ies] of [customs] litigation" (Re, *supra*, at XXIV).

F.3d at 484). The court stated that *Haggar* involved only the deference owed to "regulations" and that the "reach" of that decision thus "does not extend to standard Customs rulings." Pet. App. 6a-7a. Failing to cite or address the decision of this Court in *Zenith Radio*, the court of appeals stated that the interpretations of the tariff provisions adopted by the agency in the "binding rulings" authorized by 19 U.S.C. 1502(a) are entitled to "no deference" simply because they are interpretive "rulings" rather than "regulations." Pet. App. 7a.

That holding is flatly inconsistent with the decisions of this Court. When, as in this case, Congress has expressly authorized an agency to adopt "such rules and regulations * * * as may be necessary" for the implementation and enforcement of a statutory scheme (19 U.S.C. 1502(a)), the Court has made clear that the agency's interpretive rulings "should be dispositive" "[u]nless demonstrably irrational." *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 565 (1980). Writing for a unanimous Court in the *Milhollin* case, Justice Brennan explained that this standard of deference for interpretive rulings adopted pursuant to delegated authority from Congress exists "for several reasons." *Ibid.* First, such deference is required by "the general proposition that considerable respect is due 'the interpretation given [a] statute by the officers or agency charged with its administration.'" *Id.* at 566 (quoting *Zenith Radio Corp.* v. *United States*, 437 U.S. at 450). Second, by empowering the agency to issue interpretive rulings, Congress has "specifically designated" the agency "as the primary source for interpretation and application of the * * * law." *Ibid.* The Court noted that the legislative history of the statute involved in *Milhollin* revealed "a decided preference for re-

solving interpretive issues by uniform administrative decision, rather than piecemeal through litigation" and concluded that courts must give deference to the agency's interpretive rulings to "honor that congressional choice." *Id.* at 568. In sustaining the interpretive ruling at issue in that case, the Court emphasized that, "while not abdicating their ultimate judicial responsibility to determine the law, * * * judges ought to refrain from substituting their own interstitial lawmaking for that of the [agency]" so long as the agency's interpretation "is not irrational." *Ibid.*[9]

The decisions in *Milhollin* and *Zenith Radio* were the direct precursors of the decision of this Court in *Chevron.*[10] The reasoning of *Chevron* was also presaged by the long line of decisions which have held that the Treasury's formal interpretations of the revenue laws are entitled to this same high degree of judicial deference. In *United States* v. *Correll*, 389 U.S. 299 (1967), the Court applied this established principle in holding that an interpretive ruling adopted by the Treasury under the Internal Revenue Code must be upheld so long as it represents a "reasonable" interpretation of the statute. *Id.* at 307. The Court explained that, although "[a]lternatives to the Commissioner's * * * rule are of course available," the

[9] Professor Monaghan has stated that "[t]he court's task" in such cases "is to fix the boundaries of delegated authority, an inquiry that includes defining the range of permissible criteria. In such an empowering arrangement, responsibility for meaning is shared between court and agency; the judicial role is to specify what the statute cannot mean, and some of what it must mean, but not all that it does mean." Monaghan, Marbury *and the Administrative State*, 83 Colum. L. Rev. 1, 27-28 (1983).

[10] Indeed, the Court cited and relied on *Zenith Radio* in both *Chevron* and *Milhollin*. See 467 U.S. at 843 n.11; 444 U.S. at 566.

agency's interpretative rulings are to be upheld when "reasonable" because "Congress has delegated to the Commissioner, not to the courts, the task of prescribing 'all needful rules and regulations for the enforcement' of the Internal Revenue Code. 26 U.S.C. § 7805(a)." 389 U.S. at 306-307. The Court concluded that "we do not sit as a committee of revision to perfect the administration of the tax laws," and that, "[i]n this area of limitless factual variations, 'it is the province of Congress and the Commissioner, not the courts, to make the appropriate adjustments.'" *Ibid.* (quoting *Commissioner* v. *Stidger*, 386 U.S. 287, 296 (1967)).[11] See

[11] The Court has often stated that such deference is warranted by the greater familiarity, and resulting expertise, of the agency in interpreting and applying such complex statutory schemes. See, *e.g.*, *National Muffler Dealers Ass'n* v. *United States*, 440 U.S. 472, 477 (1979) (deference to agency interpretations "helps guarantee that the rules will be written by 'masters of the subject,' *United States* v. *Moore*, 95 U.S. 760, 763 (1878), who will be responsible for putting the rules into effect"). Commentators have observed that such deference to an agency's interpretive rules is necessary "to ensure effective enforcement of complex statutes. * * * [O]ne can compare the sporadic and case-specific character of judicial encounters with issues of statutory meaning, with an agency's continuing responsibilities and policy-implementing perspectives. * * * The more complex the statutory scheme and the more intricate the interrelationships, the larger the risks detailed judicial involvement will present. * * * In such cases, a judge's limited resources, his only occasional opportunities to seek understanding, and the often distorting character of the litigation perspective relative to administration, can lead him to fear that his decision will be more disruptive than helpful to the statutory scheme." Strauss, *One Hundred Fifty Cases Per Year: Some Implications Of The Supreme Court's Limited Resources For*

also *Whirlpool Corp.* v. *Marshall*, 445 U.S. 1, 11 (1980) (an "interpretive regulation * * * is entitled to deference unless it can be said not to be a reasoned and supportable interpretation of the Act").[12]

In *Correll*, as in *Chevron* and the cases following it, the Court has made clear that the deference accorded to the formal interpretations of the agency charged with enforcement of a statute need not be premised on

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Judicial Review Of Agency Action, 87 Colum. L. Rev. 1093, 1126-1127 (1987).

The deference to agency interpretations required in cases such as *Milhollin*, *Correll*, and *Chevron*, "preserve[s] uniformity in federal law" by providing for national determinations made by the administering agency rather than the potentially splintering effect of regional determinations made by lower federal courts. Strauss, *supra*, 87 Colum. L. Rev. at 1126. See also Scalia, *The Rule of Law As a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1178 (1989) ("The common-law, discretion-conferring approach is ill-suited * * * to a legal system in which the supreme court can review only an insignificant proportion of the decided cases.").

[12] An agency may "make a substantive [but] nonlegislative [ruling] binding on private parties" by adopting an "interpretive rule"—a format that Congress has exempted from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)). Anthony, *Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like—Should Federal Agencies Use Them to Bind the Public?*, 41 Duke L.J. 1311, 1313 (1992). Such "interpretive rules" "interpret statutory language which has some tangible meaning, rather than empty or vague language like 'fair and equitable' or 'in the public interest.' An agency may non-legislatively announce or act upon an interpretation that it intends to enforce in a binding way, so long as it stays within the fair intendment of the statute and does not add substantive content of its own. Because Congress has already acted legislatively, the agency need not exercise its own delegated legislative authority. Its attempts to enforce an interpretation can be viewed as simply implementing existing positive law previously laid down by Congress." *Ibid.*

the existence of the sort of express evidence in the legislative history cited by the Court in the *Milhollin* case. See page 23, *supra*. Instead, such deference arises from the "presumption" that, when Congress has "left ambiguity in a statute meant for implementation by an agency," Congress "desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. at 740-741.[13] See also *Chevron*, 467 U.S. at 844 (the delegation may be "implicit rather than explicit"). In the present case, the accuracy of the "presumption" described in *Smiley* and *Chevron* is, in any event, manifestly borne out in the text and history of the statute. By authorizing the agency to adopt "binding rulings prior to the entry of the merchandise" in order "to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon" (19 U.S.C. 1502(a)), Congress stated its plain intention that "[t]he Customs Service will be responsible for interpreting and applying" this statute (H.R. Conf. Rep. No. 576, *supra*, at 549-550).

4. This is thus not a case like *Christensen* v. *Harris County*, 120 S. Ct. 1655 (2000), in which the Court

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[13] "[T]he degree of deference that a court should give any agency interpretation of law is properly, within broad constitutional limits, entirely a matter of legislative intent. Recognizing that fact, however, will not generally prove very helpful, for legislatures do not often provide much evidence of their intention to delegate law-making power. Consequently, rules tying the degree of deference to be accorded agency action to the type of agency action involved may become necessary. * * * Any such rules, however, remain residual rules: they may not trump evidence of a contrary legislative intent." Monaghan, *supra*, 83 Colum. L. Rev. at 31 n.184.

recently concluded that a lesser standard of deference applies to an agency opinion issued in an informal format (such as correspondence or agency manuals) that "Congress has not authorized for that purpose" (1 Kenneth C. Davis & Richard J. Pierce, *Administrative Law Treatise* § 3.5, at 120 (3d ed. 1994), cited with approval at *Christensen* v. *Harris County*, 120 S. Ct. at 1663).[14] In the *Christensen* decision, the Court stated that informal agency rulings "contained in formats such as opinion letters[,]" "policy statements, agency manuals, and enforcement guidelines" are only "'entitled to respect' under our decision in *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944)" and "do not warrant *Chevron*-style deference." 120 S. Ct. at 1662, 1663.[15] In the present case, the format selected by the

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[14] The respondent in *Christensen* quoted this extract from the Davis treatise in arguing that "the informal, private Opinion Letter" involved in that case was entitled to less force "than the Secretary's published, formal interpretations of the FLSA" because it was issued in a format that Congress had not authorized. Resp. Br. No. 98-1167 at 31-32. In holding that the private opinion letter at issue in that case was "entitled to respect" but did not "warrant *Chevron*-style deference," the Court cited (but did not quote) the portion of the Davis treatise on which respondent relied. 120 S. Ct. at 1663.

[15] The Court stated in *Christensen* that "interpretations contained in formats such as opinion letters are 'entitled to respect' under * * * *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 * * * (1944), but only to the extent that those interpretations have the 'power to persuade,' *ibid.*" 120 S. Ct. at 1663. The Court cited three decisions in support of the proposition that informal agency interpretations such as private opinion letters, guidelines and manuals are entitled only to the "respect" warranted under the *Skidmore* opinion. 120 S. Ct. at 1662-1663, citing *Reno* v. *Koray*, 515 U.S. 50, 61 (1995); *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244, 256-258 (1991); *Martin* v. *Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 157 (1991). None of the cited

agency—the formal adoption and issuance of binding interpretive rulings—is precisely the format authorized by Congress for this purpose. As this Court held in *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. at 568, by

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decisions, however, concerned an interpretive rule (such as the rule involved in the present case) that was adopted by an agency in the very format that Congress has expressly authorized for that purpose.

For example, in *Reno* v. *Koray*, 515 U.S. at 61, the agency had adopted "an internal agency guideline" rather than a formal interpretive rule. The Court nonetheless cited and relied on *Chevron* in holding that the agency's views were entitled to "some deference" as a "permissible construction of the statute." *Ibid.* (quoting *Chevron*, 467 U.S. at 843). In *EEOC* v. *Arabian American Oil Co.*, 499 U.S. at 257, the Court declined to afford *Chevron* deference to an interpretive rule issued by the EEOC expressly because "Congress, in enacting [the relevant statute,] *did not confer upon the EEOC authority to promulgate rules or regulations.*" *Ibid.* (quoting *General Elec. Co.* v. *Gilbert*, 429 U.S. 125, 141 (1976) (emphasis added)). The interpretation involved in the *EEOC* case, like the interpretation involved in *Christensen*, had thus not been made in a "format" that Congress had authorized. The Court therefore afforded the EEOC's ruling the deference owed under *Skidmore*, rather than deference required by *Chevron*. *Ibid.* Finally, in *Martin* v. *Occupational Safety & Health Review Comm'n*, 499 U.S. at 157, the Court stated that "informal interpretations" and enforcement guidelines would be entitled only "to some weight on judicial review" *unless "the interpretation assumes a form expressly provided for by Congress."* *Ibid.* (emphasis added).

None of these cases supports the contention of respondent that interpretive rulings that are formally adopted in a format that Congress *has* prescribed are not entitled to *Chevron* deference. Numerous decisions of this Court—including *Zenith Radio*, *Milhollin* and *Correll*—reflect that agency interpretive rulings adopted in a format that Congress has prescribed are to be sustained if they represent a "reasonable" interpretation of the statute. See pages 23-27, note 11, *supra*.

affording deference to the agency's formal interpretations, the Court "honor[s] that congressional choice." See also *Martin* v. *Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 157 (1991) (deferring to an agency interpretation when issued in "a form expressly provided for by Congress"); *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 70, 75 (1975) (deferring to formally adopted "guidelines" applied in agency determination).

In 19 U.S.C. 1502(a), Congress expressly authorized the Customs Service to adopt and issue "binding rulings" to address and resolve tariff classification issues. See page 2, *supra*. Pursuant to that statute, the agency has specified that a (19 C.F.R. 177.9(a)):

> ruling letter [thus] issued by the Customs Service * * * represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel * * * until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances.

Respondent errs in suggesting (Br. in Opp. 9) that the "binding rulings" adopted under this statute are not really binding because the regulations caution that they are "subject to modification or revocation without notice" (19 C.F.R. 177.9(c)) and apply "only with respect to transactions involving articles identical" to those addressed in the ruling request (19 C.F.R. 177.9(b)(2)). Respondent fails to note that the regulations make clear that, unless modified or revoked, the classification

rulings adopted by the agency under these procedures are "precedential" and "may be cited as authority in the disposition of transactions involving the same circumstances." 19 C.F.R. 177.9(a).

Because the agency's interpretive rulings were issued in the format that Congress authorized for this specific purpose, the courts below should have deferred to these rulings and upheld them if they "implement the congressional mandate in some reasonable manner." *United States* v. *Correll*, 389 U.S. at 307.[16] See also *Zenith Radio* v. *United States*, 437 U.S. at 450.[17] Otherwise, the legislative intent that the agency employ such "binding rulings" to ensure that "the statute is applied in a consistent and proper manner" to all

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[16] The agency has followed the format prescribed by Congress for issuing "binding" interpretive rulings in this case. See 19 U.S.C. 1502(a); 19 C.F.R. 177.9(a). When, as here, "the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited." *NLRB* v. *Hearst Publications, Inc.*, 322 U.S. 111, 131 (1944). The agency's interpretation of the statutory term is to be accepted in this context if it has "a reasonable basis in law." *Ibid.*

[17] Nothing in the *Christensen* decision purported to overrule these longstanding precedents that accord a high degree of deference to the interpretations of the revenue laws set forth in Treasury Department rulings. In *Skidmore*, the Court had emphasized that it "has long given considerable and in some cases decisive weight to Treasury Decisions and to interpretative regulations of the Treasury and of other bodies that were not of adversary origin." 323 U.S. at 140. And in *Correll*, which was decided twenty years *after Skidmore*, the Court held that Treasury rulings are to be sustained when they set forth a "reasonable" interpretation of the statute. 389 U.S. at 307.

taxpayers (*United States* v. *Haggar Apparel Co.*, 526 U.S. at 392) would be defeated.[18]

5. The holding of the court of appeals that "no deference" would be accorded to the agency's "binding rulings," and the court's refusal to consider or address the reasoning set forth in those rulings,[19] also cannot be reconciled with the holding in *Christensen* that even informally stated agency opinions are entitled to "some deference" (120 S. Ct. at 1662 (quoting *Reno* v. *Koray*,

[18] While the Court in *Christensen* noted that substantive regulations issued under the notice and comment procedures of the APA are the paradigmatic example of agency action for which judicial deference is required (120 S. Ct. at 1662), this Court has long made clear that, when Congress has authorized the agency to act by alternative methods, the route selected is a matter committed to the agency's discretion. See *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 292-293 (1974); *SEC* v. *Chenery Corp.*, 332 U.S. 194, 202 (1947). Congress has, in fact, directed the Customs Service to employ notice and comment procedures for "binding rulings" *only* when the ruling would "modify * * * or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days" or would "have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions." 19 U.S.C. 1625(c)(1),(2). Pursuant to that statute, the interpretive issues involved in this case have been aired before the public in several precedential Customs Service rulings. See 31 Cust. Bull. 14 (Aug. 27, 1997)(proposing to issue HQ 960542, 960762, 960763 & 960764); 31 Cust. Bull. 7 (Oct. 22, 1997) (adopting those rulings); 29 Cust. Bull. 23 (Apr. 12, 1995) (proposing to issue HQ 957667); 29 Cust. Bull. 17 (May 31, 1995) (adopting that ruling).

[19] In holding that "no deference" is to be given to the agency's interpretive rulings, the court of appeals relied (Pet. App. 6a-7a) on *Rollerblade, Inc.* v. *United States*, 112 F.3d 481, 483-484 (Fed. Cir. 1997). The *Rollerblade* decision, however, had based its "no deference" conclusion on an interpretation of 28 U.S.C. 2643(b) which this Court unanimously rejected in *United States* v. *Haggar Apparel Co.*, 526 U.S. at 390-392.

515 U.S. at 61)), are "entitled to respect" from the courts, and should therefore, at a bare minimum, be reviewed to determine if they have the "power to persuade" (120 S. Ct. at 1663 (quoting *Skidmore* v. *Swift & Co.*, 323 U.S. at 140)). The conclusion of the Federal Circuit in the present case that no consideration whatever should be given to the content or reasoning of the agency's binding rulings (Pet. App. 7a) is thus squarely inconsistent with *all* of the standards of deference described in this Court's decisions.

In particular, even an informally announced agency interpretation which (unlike the "binding rulings" involved in this case) has *not* been issued in a format that Congress has prescribed for interpretive pronouncements would still warrant "some deference" under *Skidmore* v. *Swift & Co.*, 323 U.S. at 140. The deference afforded to such informal pronouncements would be based upon (*ibid.*):

> the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all of those factors which give it power to persuade, if lacking power to control.

The open-ended list of factors described in *Skidmore*, of course, provides only limited guidance to the parties or to the courts.[20] Because the outcome of each dispute would be relatively unpredictable under that formulation, a broad application of that approach would necessarily magnify the volume and cost of administrative

[20] "Prior to *Chevron*, courts had frequently done what *Chevron* prohibited: they imposed their own constructions on ambiguous agency-administered statutes." Pierce, *Reconciling* Chevron *and Stare Decisis*, 85 Geo. L.J. 2225, 2225 (1997).

litigation.[21] See, *e.g.*, *United States* v. *Correll*, 389 U.S. at 306-307; note 11, *supra*. It would also undercut the traditional choice that agencies possess in selecting the "format" in which they elect to issue statutory interpretations. See note 18, *supra*. Nonetheless, even under the *Skidmore* standard, the court of appeals erred in flatly holding that the agency's "binding ruling" was entitled to "no deference" in this case.

II. THE CUSTOMS SERVICE REASONABLY INTERPRETED THE STATUTORY CLASSIFICATION OF "BOUND" "DIARIES" TO INCLUDE THE SPIRAL AND RING-BOUND DAY PLANNERS IMPORTED BY RESPONDENT

Under the proper standard of deference that applies to agency interpretations of the "statutes that they are charged with administering" (*Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. at 739), the Customs Service classification ruling should have been sustained in this case. The Headquarters Rulings involved here were not sparsely explained or hidden from public view. See Pet. App. 28a-47a; note 1, *supra*. To the contrary, the agency's rulings set forth a significantly more refined, and less wooden, interpretation of the statutory language than is manifested in the decision of the court of appeals.

The tariff classification issue in this case requires interpretation of two terms in Subheading 4820.10.20 of the HTSUS—"diaries" and "bound." The court of

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[21] When courts apply a standard that "directs [the] consideration of so many elements, * * * almost any result may be justified." *Missouri* ex rel. *S.W. Bell Tel. Co.* v. *Public Serv. Comm'n*, 262 U.S. 276, 292, 298 (1923) (opinion of Brandeis and Holmes, JJ.).

appeals refused to consider the detailed Headquarters Rulings (HQ No. 955937 and HRL Nos. 955636, 955637) issued by the Customs Service that have "consistently determined that articles similar in design and/or function to the instant merchandise are classifiable as diaries." Pet. App. 31a. In these rulings, the Service has rejected respondent's reliance on narrowly selected dictionary definitions, noting that "[m]any words have several definitions and Customs may consider any or all of them when making a classification determination." *Id.* at 33a.[22] In particular, the Customs Service has explained that reliance on any single, narrow definition is inconsistent with the commercial context in which the tariff provisions apply: business "diaries" are a recognized commercial product and this "broader concept of diary * * * reflects the common and commercial identity of these items in the marketplace." *Id.* at 34a.[23]

The Customs Service has also properly concluded that these daily planners are "bound" for purposes of HTSUS 4820.10.20. Pet. App. 44a-46a. The Customs Service disagreed with respondent's contention that a definition of a "bound book" from the publishing industry controls in determining whether a "diary" is "bound" under this Subheading. "The issue is not what constitutes a bound book, and there is no requirement

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[22] The Customs Service correctly noted that "the narrower definition of 'diary', as set forth in the *Oxford English Dictionary's* first definition, connotes an article containing blank pages used to record extensive notations of one's daily activities. This is not the sole format for a diary." Pet. App. 33a.

[23] The Customs Service found additional support for this functional approach in the precedents of the former Customs Court. Pet. App. 36a-40a (citing *Fred Baumgarten* v. *United States*, 49 Cust. Ct. 275 (1962), and *Brooks Bros.* v. *United States*, 68 Cust. Ct. 91 (1972)).

that a diary be in the format of a book." *Id.* at 44a. The Service instead relied on the Harmonized Commodity Description and Coding System Explanatory Notes—"which represent the official interpretation of the HTS at the international level"—which state that "goods of this heading may be bound with materials other than paper (e.g., leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc." *Id.* at 45a.[24] The agency concluded that this official explanation makes it "clear that the Harmonized System Committee contemplated metal binders as being within this heading's definition of bound articles." *Ibid.* The conclusion that respondent's daily planners are "bound" under this Subheading not only comports with the official interpretation of the drafting authority, it also makes "semantic" sense: "[A] binder, whether a ring binder or spiral, is that which binds pages together in a fixed order. Pages held together in this manner are bound, and the diary is therefore deemed a bound article." *Id.* at 46a.

The court of appeals did not suggest that the agency's thorough, well-formulated interpretation of the statute is not a reasonable elaboration of its

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[24] The Harmonized Commodity Description and Coding System Explanatory Notes set forth the official interpretation of the international organization that drafted the nomenclature that serves as the basis of the HTSUS. These Explanatory Notes "are intended to clarify the scope of HTSUS subheadings and to offer guidance in interpreting subheadings." *Mita Copystar Am.* v. *United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). While the Explanatory Notes are not "legally binding on the United States," they are "generally indicative of proper interpretation of the various provisions of the [HTSUS]." *Lynteq, Inc.* v. *United States*, 976 F.2d 693, 699 (Fed. Cir. 1992) (quoting H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 549 (1988)).

provisions. Instead, the court of appeals simply displaced the agency's reasonable interpretation of the Tariff Act with another, perhaps plausible, interpretation of its own. See pages 8-10, 12-15, *supra*.[25] That action by the court of appeals was in error: "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. When, as in this case, the agency's interpretation "defines a term in a way that is reasonable in light of the legislature's revealed design," the agency's judgment is to be given "controlling weight." *Nationsbank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. at 257. See also note 7, *supra*.

Even under the *Skidmore* formulation, the decision of the court of appeals would have erred by failing to give the agency's interpretation "great deference." *United States* v. *Consumer Life Ins. Co.*, 430 U.S. 725, 751-752 (1977). Moreover, the refusal of the court of appeals to defer to the agency's interpretations of the detailed classification provisions of the Tariff Act has substantial practical importance. The agency routinely employs "binding rulings," rather than regulations, to address the proper application of the detailed customs provisions to the "limitless factual variations" created

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[25] In view of the fact that the court of appeals declined to consider industry usage, and failed to address the official interpretation of the tariff provision by the international drafting authority, it could fairly be questioned whether the decision of the court of appeals itself bears the indicia of a "reasonable" elaboration of the statute. See pages 12-15, *supra*. Moreover, in insisting that a diary must be retrospective rather than prospective in nature, the court of appeals ignored the fact that notations of forthcoming appointments or engagements also serve as a retrospective record of those events after they have occurred.

by modern commerce (*United States* v. *Correll*, 389 U.S. at 307).[26] By denying deference to the agency's interpretations of these intricate statutory provisions, the Federal Circuit has left both importers and the Customs Service without effective guidance for a wide range of transactions. The result of the *ad hoc* approach adopted by the court of appeals is expensive customs litigation and unpredictable outcomes.

Indeed, this Court has previously rejected the inefficiency and uncertainty that would result from the non-deferential approach adopted by the court of appeals in holding in *Zenith Radio*, 437 U.S. at 450, that the agency's "reasonable" interpretive rulings under the Tariff Act are to be sustained by a reviewing court. When, as here, "the administrator's reading fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design," the administrative interpretation should be given "controlling weight." *Nationsbank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. at 257 (quoting *Chevron*, 467 U.S. at 844).

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[26] The agency advises us that its Headquarters Office issues an average of more than 1000 "binding rulings" each year involving tariff classification, customs valuation and country of origin determinations.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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